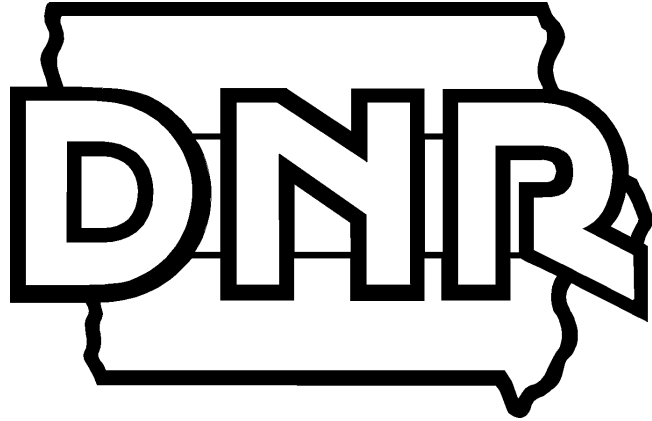


**REAL
ESTATE
PROFESSIONALS
and
UNDERGROUND
STORAGE
TANKS**

**An Information
Booklet for Real
Estate
Agents/Brokers**

June 2013



**Iowa Department of Natural Resources
Environmental Services Division
Land Quality Bureau**

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Des Moines, Iowa 50319**

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**UST Database Website:
<http://programs.iowadnr.gov/tanks/>**

There's an Underground Storage Tank on the Property: What Do I Do?

Real Estate agents/brokers may feel uneasy when they realize a property they are showing or listing has or had one or more underground storage tanks (USTs) on the premises. Part of this unease may stem from not knowing what needs to be done, who is responsible for contamination and where to turn for assistance in dealing with USTs.

If you are a real estate agent/broker who sometimes must deal with USTs on properties in Iowa and would like to better understand how to go about it, this booklet is for you.

This Information Can Help You and Your Clients:

⇒ As a reference and guide for dealing with properties affected by USTs.

⇒ Understand the various options a seller or buyer has when an UST is on a property, and provide specific, common sense guidance to parties seeking to transfer property affected by USTs.

⇒ Contact the UST regulatory authority and other professionals working with USTs.

⇒ Obtain more information on USTs.

This Information Can Also Help You Conduct Quicker, Smoother Transactions

Understanding UST regulations can help make real estate transactions progress quickly and smoothly. Sellers and realtors know--good tank management makes for better real estate business. Property with properly maintained USTs is a more attractive property to buyers and lenders because:

- a well maintained UST will require less intervention from regulatory authorities, and
- there is less chance the USTs could re-emerge as an issue or problem after a transaction is completed.

This booklet is arranged in question/answer format to better assist you and your clients with common issues and concerns about USTs. It is organized in the following sections:

Section 1 (Pages 3-4) gives you the basic information about USTs--who regulates them, how to contact the agencies involved in UST regulation in Iowa, and sources of information to help you learn more about specific UST properties.

Section 2 (Page 5) explains how to perform a walk-through of a property to look for evidence of USTs.

Section 3 (Pages 6-9) anticipates the situations real estate professionals encounter when USTs are or were present on the property. It is divided into three areas. What should be considered when:

- 1) sites have USTs that will remain in operation;
- 2) sites have active USTs that will be closed; and
- 3) sites have abandoned USTs or used to have USTs.

Section 4 (Pages 9-11) covers topics such as contamination, liability and funds for clean up.

Section 5 (Page 12) explains UST permanent closure requirements in Iowa.

Further Information (Page 13)

Section 1

So.... What Do I Need to Know?

This section provides you with a framework for understanding how and why USTs are regulated in Iowa. (**Please note**, however, this booklet is not meant to be a comprehensive guide to Iowa's UST regulations but rather a lay person's introduction to them. A section at the end of the booklet lists sources of more complete information.)

What, Technically Speaking, is a Regulated UST?

An underground storage tank (UST) is a tank and any underground piping connected to the tank that contains a regulated substance (petroleum or hazardous substances), with at least 10 percent of the volume of the tank system underground (e.g., a tank situated above the floor in a basement would not be considered an underground tank).

What is a LUST?

An underground storage tank that leaked or spilled product into the soil and/or groundwater and is undergoing assessment, cleanup or corrective action is called a Leaking Underground Storage Tank (LUST).

Why Regulate USTs?

USTs containing petroleum and certain hazardous chemicals are subject to federal, state, and sometimes local regulation. USTs are regulated because petroleum or other hazardous substances can leak from them into the soil and contaminate groundwater, the source of drinking water for 50 percent of all citizens in Iowa.

One gallon of gasoline released from an UST can contaminate 10 million gallons of drinking water. Exposure to petroleum through contact, ingestion or inhalation may adversely affect human health. Additionally, petroleum in groundwater can migrate and pollute Iowa's lakes and streams. Because of the increased potential for leaks to Iowa's soil and groundwater, USTs require stringent regulations.

Who is the UST Regulatory Authority?

In Iowa, DNR is the regulatory authority for USTs. DNR's Underground Storage Tank Section enforces the state's UST regulations found in Chapters 567--135 and 136 of the Iowa Administrative Code. The US Environmental Protection Agency (EPA) has approved DNR's UST program to enforce federal regulations. DNR is the principal regulatory authority.

DNR's regulatory program for USTs has two objectives:

- prevent future contamination from USTs, and
- thoroughly address any existing contamination and the risks it poses to public health, safety and the environment.

The prevention objective requires tanks and piping to conduct leak detection monitoring, and to meet new tank construction standards such as spill protection, corrosion protection and overfill prevention. Existing tanks (those installed before 1988) were to have been upgraded to new tank standards or be permanently closed by December 22, 1998. These new standards were designed to reduce the chances of a release occurring through spills, overfills, or failures in the tank and piping system.

Owners and operators of all regulated tank systems must operate and maintain approved methods to detect leaks in the tank and piping. Leak detection methods are meant to help owners and operators detect leaks early, should they occur, and prevent them from spreading.

Cleaning up leaks can be costly. Therefore, owners and operators must also demonstrate a method of financial responsibility (insurance) to cover the cost of cleanup and corrective action if a release occurs. The financial responsibility requirement also makes sure someone can compensate third parties for bodily injury and property damage caused by leaking USTs.

What Does the Iowa UST Fund Do?

The Iowa UST Fund has two programs. The Remedial benefits program and the Innocent Landowner program provide funding to eligible claimants to assist in meeting the costs of addressing historical contamination at sites where tanks have not been operated since October 26, 1990 and/or where the release of contamination was determined to have occurred prior to October 26, 1990. The Iowa UST Fund Board also entered into global cost recovery settlements with several major oil companies and those monies are available to assist eligible claimants in paying for the required copayments. Any eligible claimant has the opportunity to "opt-in" to the Global Settlement program, if one of the settling major oil companies supplied fuel to the fund-eligible site. In addition, the Board will now waive the copayment requirement for claimants eligible under the Innocent Landowner fund where the claimant is not a responsible party or potentially responsible party for the site for which the claim is established.

The UST Fund Board formerly administered the state's financial responsibility program (UST insurance required under federal and state law to cover accidental release and third-party liability), but on November 8, 2000, all assets and liabilities of the Iowa UST insurance Fund were transferred to Petroleum Marketers Mutual Insurance Company (PMMIC), which was established as a private, non-profit corporation. In 2005, PMMIC reorganized into a for-profit corporation and currently insures over two-thirds of the UST sites in Iowa.

What if I want to check on a site?

You can now look up UST sites in Iowa on DNR's public information UST database (see website below). This website was initiated in April 2003 to provide information to the general public about Iowa's regulated tank sites, including UST and LUST information. If you have any questions about a specific UST site, search on the website below. If you have further questions regarding UST/LUST sites after your search contact DNR (see cover):

UST Database Website for general information about UST/LUST sites in Iowa:
<http://programs.iowadnr.gov/tanks/>

To order the DNR records of UST or LUST sites contact:

DNR Records Center
502 E 9th ST
Des Moines, IA 50319-0034
515.242.5818

For Information on
UST Pollution Liability Insurance

<http://www.iowadnr.gov/InsideDNR/RegulatoryLand/UndergroundStorageTanks/USTOwnersOperators/USTLiabilityInsurance.aspx>

For information on the Remedial, Innocent Landowner, or Global Settlement Programs, contact the Administrator of the UST Fund.

Fund Administrator
AON Risk Services, Inc
2700 Westown Parkway, Suite 320
West Des Moines, IA 50266
515.225.9263 or toll free 877.312.5020

For questions regarding the Remedial program or the Innocent Landowner program contact:

Cunningham Lindsey
4685 Merle Hay Rd, Suite 106
Urbandale, IA 50322
515.276.8046

The information in this booklet is based on Iowa UST regulations. UST owners, operators and property owners are legally responsible for compliance with these rules. *(Note: There may be other health and safety regulations at the local level which may apply to an UST and which are not included here. Contact your county permits division and the local fire department for further information.)*

Section 2

Is There An UST on the Property?

Keep in mind any property may contain an UST (or more than one). Even if you are aware of active USTs on a site, there may be older abandoned tanks.

USTs have been found in many unusual places, and some USTs do not give any visible indication of their presence. Many converted properties, such as fast food restaurants or used car lots were previously gasoline service stations.

Examples of where USTs are commonly found include gasoline stations, convenience stores, residences, trucking and busing terminals, railroad yards, farms, schools, auto repair shops, factories and retail facilities.

A walk-through of a property may uncover indications of abandoned USTs. Items to look for include:

- **Old vent piping.** Vent piping is usually found outside of structures, and is normally 2 to 12 feet tall. Vents pipes are usually made of 1.5 to 2 inch galvanized piping and in many cases have a cap, which looks like a mushroom on the top of the piping.
- **Fill pipes.** Fill piping is normally directly over the top of an old UST. A fill pipe can be 2 to 4 inches in diameter. The fill pipe should be capped. Do the tanks have product in them? If you can, remove the cap and stick the tank to see if there is liquid in the tanks. Some old tanks were never emptied when they went out of use. You should be able to tell whether it's water from infiltration (perhaps through corroded steel) or product that hadn't been emptied.
- **Dispensers.** Especially on former farm and gas station sites, the old dispenser may still be standing. These units can be large like the one you fill your car with, or they can be small with an electric motor and hose attached.
- **Abandoned piping.** In many buildings that have changed their source of heat, you may

- find abandoned piping. This piping may be copper or galvanized steel. There are normally two lines associated with a heating oil system. If abandoned lines run out through a wall, there is a good possibility that there is an UST on the other side.

DNR's website (see page 4 or cover page) is the first place to check for USTs on a property. DNR maintains information on all known regulated (active and closed) UST and LUST sites in the state. Records of UST and LUST sites may also be viewed at the Records Center on the fifth floor of the Wallace Building.

If DNR Has No Record of an UST on the Property, How Can a Property be Investigated for USTs?

Contact a certified groundwater professional (CGWP) for a site investigation. In Iowa a CGWP is the person most familiar with procedures for subsurface soil and groundwater investigations. The DNR's UST Section is responsible for the certification program for groundwater professionals. Anyone performing or supervising site checks, assessments, remediation or corrective action at LUST sites in Iowa must be a Certified Groundwater Professional.

Owners, prospective buyers or interested parties may want to consider conducting a Risk Based Corrective Action (RBCA) Tier 1 evaluation in place of the typical site investigation or property assessment. DNR will be better able to assess the site if a Tier 1 evaluation is conducted.

If a more limited investigation is conducted and contamination is found above the department's action levels, a Tier 1 evaluation would need to be completed. See the list of CGWPs on the UST Section's website (page 4 or cover) or contact DNR for a list of certified groundwater professionals.

Section 3

How Do I Deal with USTs at Listing Time?

There is no question that property with a history of UST operations--whether contaminated or not or unknown--has restricted marketability and value. However, experience shows many of these sites can be marketed and put back into productive use if the interested parties are fully aware of all the facts, obtain good technical and legal assistance and are willing to manage the real or perceived risks associated with these sites. DNR and the Iowa UST Fund provide as much assistance as possible within their given authorities to facilitate the marketability of these sites.

1. *What Should I Consider When Selling or Buying an Active, Regulated UST Site that Will Remain in Operation?*

Are the USTs Registered? Iowa regulations require owners to register with DNR all USTs that contain a regulated substance. Any UST used after January 1, 1974 and not removed from the ground before July 1, 1985 should have been registered with DNR. Farm and residential tanks less than or equal to 1,100 gallons and installed before July 1, 1987, are exempt from tank technical and operational requirements, but were required to have been registered with DNR. Any contamination discovered from farm or residential tanks is subject to cleanup and corrective action requirements. Farm or residential tanks installed after July 1, 1987 are subject to all UST regulations. Heating oil USTs are not regulated, but are subject to cleanup or corrective action requirements if a release is discovered.

- **What kind of tank and piping system is in operation?** Upgrade requirements of 1998 required existing tanks to have **spill protection** (a catchment basin to contain spills when the delivery hose is disconnected), **overflow prevention** (automatic shutoff device, overflow alarm, or ball float valve) that prevents overfilling the

tank at delivery, and **corrosion protection**, which inhibits corrosion on steel USTs.

An UST made of noncorrodible material such as fiberglass does not need corrosion protection. An UST (and any piping) made of corrodible material like steel must have a way of inhibiting the corrosion, which can cause leaks. The tank and its corrosion protection system must be tested and/or inspected regularly--at least once every three years.

- **Is the UST system checked regularly for leaks? Is the tank system “tight” and can you confidently represent the site as “in compliance?”** Every UST must have a properly maintained leak detection monitoring system. USTs must be monitored at least monthly for leaks. Leak detection monitoring records should be available for review at the facility. A tank system tightness test commonly is performed before the transfer of property to ensure the system is not leaking.
- **Are UST system records maintained?** An UST owner/operator must maintain records of tank installation and upgrades, maintenance, leak detection monitoring, testing, repairs and any corrective action taken.
- **Are the tanks insured?** If not, the prospective buyer should have concerns about coverage in case a release has occurred from the tank system. Owners and operators of UST systems must demonstrate a method of financial responsibility to cover a release. If coverage has not been maintained, any release that may have occurred prior to your purchase would not be covered. If a site had pollution liability insurance, a new owner would normally have the insurance policy transferred to them or obtain new insurance coverage. However, unless a retroactive date for coverage is purchased, any prior contamination that may be present due to a prior release would not be covered. If a site has lost insurance coverage, an insurance investigation—including soil and groundwater testing, tightness testing for tanks and piping, and other requirements – may be necessary prior to purchase of the property. These tests are expensive and can take several weeks to complete.

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- **How does an owner/operator obtain financial responsibility coverage?** Owners or operators of active UST systems may choose from a variety of financial mechanisms to comply with the regulations. One of these mechanisms is the use of insurance. Insurance may be purchased from insurance companies, agents, and brokers. It is the owner's responsibility to make certain the coverage meets state UST requirements. Contact DNR for questions about fulfilling financial responsibility or for a list of known insurance providers for USTs.

The premiums for financial responsibility coverage are based upon the risk the UST systems present to the environment. The coverages provided also address corrective action costs and third party liability up to \$1 million.

- **If there is contamination, what is the status of compliance?** For general information about the site, visit the UST database website or talk to a DNR LUST Coordinator for the site to find out where it is in the LUST reporting and evaluation process.
- **Does the contamination present future health, safety or environmental risks that the buyer should be aware of?** A review of the LUST record should disclose the risks involved and other important information. A review of the LUST record is the only way to know what activity is taking place at the site, and the extent of contamination. A copy of the LUST record can be obtained from the Records Center (515.242.5818) or you can check out the record and review it in the Wallace Building.
- **Could there be restrictions on the future land uses or construction activities at the site?** Yes. "Institutional Controls" may be placed on the use of a contaminated property. For example, there may be restrictions on installing wells, plastic waterlines, sanitary sewers, basements or other confined spaces which could accumulate petroleum vapors. Contact the LUST coordinator for any prohibitions on the use or access to a

contaminated site. You may also contact the County Recorder where the site is located as the institutional controls should be recorded on the property deed.

- **What are the potential liabilities of the buyer or lender?** Normally, the seller retains the environmental liabilities for the existing contamination. If the seller is eligible for any of the UST Fund Programs, those benefits can be assigned. The buyer is liable for any release that may occur after acquiring the property. Lenders are not considered liable unless they participate in the management of the UST system. (See also Section 4, page 9.)
- **What about complaints or potential claims of damages by neighbors from contamination?** These are known as third party liability claims. For third party claims from contamination that occurs from USTs that are insured, the insurance will cover this. However, for claims from past contamination, the Remedial Benefits Program of the UST Fund does not cover third party liability.

2. What Should I Consider When Selling or Buying An Active, Regulated Facility Where the USTs Will Be Taken Out of Service?

- **What is the status of the tanks?** If the UST system operation is discontinued, a Temporary Closure Form must be submitted to DNR. USTs may be temporarily out of service for no more than 12 months. After 12 months, the UST system must be permanently closed or the owner/operator requests an extension to temporary closure.

After three months of temporary closure, vent lines must remain open and functioning, and all other pumps, lines and manways must be capped and sealed.

- **What do the most recent leak detection records indicate?** Owners must monitor the UST system for releases at least once a month. Make sure the system was monitored and records were kept. One year's worth of records must be maintained. If there was an indication of a release, what was the corrective action or repair that followed?
- **Is the seller prepared to undertake proper closure of the UST system?** Unless the buyer intends to assume all liability associated with the tanks, the UST system should be properly closed and preferably removed prior to ownership transfer.
- **Is the owner/operator current with financial responsibility requirements?** USTs may not operate without proof of financial responsibility (insurance). If contamination is confirmed, who will pay for cleanup, corrective action or third-party liability if there is no insurance coverage?
- **If the site is contaminated, what is the compliance status?** Contact the LUST coordinator for the site to find out whether the site is up to date in the reporting and evaluation process.
- **Is the seller UST Fund eligible or otherwise solvent?** Contact the UST Fund to find out if the site is eligible for remedial benefits or if the site has financial responsibility coverage. If not, the buyer should be prepared to pay for the costs of permanent closure, cleanup and/or corrective action.
- **Are there future risks, restrictions on land use, potential liabilities and other considerations as described above for active facilities?** Review the LUST record to see if "institutional controls" have been or could be placed on the site that would prohibit the prospective buyer from undertaking specific activity on the property, such as the installation of utilities, a well, or constructing a basement.

3. What Should I Consider When Selling or Buying an Abandoned UST Site?

- **How can I determine if the USTs are still in the ground?** You can begin with a walk-through of the property and follow up with a search of historical uses of the property, including a search for tanks on DNR's website (see page 4 or cover). A walk-through of the property should reveal obvious signs that USTs are or were on the property. (See page 5 for examples of what to look for during a walk-through.)

- **Are the USTs "Exempt Pre-74?"**

The registration and closure provisions for regulated USTs do not apply to USTs that were out of operation and emptied by January 1, 1974. If contamination is discovered at an exempt pre-74 site, DNR must be notified and appropriate procedures followed.

If the property owner claims the USTs meet the exemption, an **Exempt Pre-74 Affidavit** is available from DNR for the owner to sign and have notarized. The affidavit certifies that based on a reasonable investigation and to the best of the owner's (or affiant's) knowledge the tanks were out of operation and emptied by January 1, 1974.

- **What are the advantages and disadvantages to removing old tanks?** If Exempt Pre-74 or non-regulated tanks (e.g., heating oil) are removed, there is a possibility that contamination would be encountered. A release investigation and possibly corrective action or cleanup would be required.

If the USTs are not removed prospective buyers or lenders may require removal and/or assessment before the property transfers or the value of the property may be adversely affected. It is generally advantageous to remove USTs before the property transfers so there is no question the buyer is not the owner/operator or responsible party of the USTs.

- **Should soil and groundwater testing be conducted to determine whether the property is contaminated?** The buyer and seller need to decide whether to conduct a site assessment or Tier 1 at a non-regulated UST site. The risk of performing a site audit involves the possibility of finding contamination, which may require cleanup or corrective action.

A site assessment or Tier 1 is really the only way to know the general environmental conditions of a site and to have as complete information as possible about the value of the property. If contamination is discovered, the site could become a financial burden to the seller and the value of the property negatively affected. If the property is sold, contract language may specify who is responsible for cleanup or corrective action for the existing contamination.

- **If the site is contaminated, who is responsible and what financial assistance is available to address it?** The property owner or the last owner/operator may be the responsible parties. If the responsible party is not available, the buyer or new property owner may be liable for investigation of contamination, but not cleanup or corrective action. If the tanks were out of use and empty by October 26, 1990, the buyer may be eligible for Innocent Landowner benefits.
- **Are there requirements to report contamination if it is discovered?** Owners must report all suspected releases (e.g., an actual release of product or the discovery of vapors in soils, basements, sewer and utility lines, and nearby surface water). The suspected release must be immediately reported, investigated and confirmed.

By State law, any contamination discovered from leaks from an UST must be reported to DNR within 24 hours or within six hours if a hazardous condition exists (which creates an immediate or potential danger to the public health or safety or to the environment). An investigation (including soil and groundwater sampling) is necessary to confirm a release.

To report a confirmed or suspected release, the property owner should call 515.281.5918 (daytime) or 515.281.8694 (24 hours).

Section 4

What About Possible Contamination from Leaking USTs? Who Might Be Held Liable?

The question of possible contamination from a LUST (past or present) will almost certainly come up in any transaction involving property, which has or had an UST. DNR files under both the UST registration number and the LUST site number should be consulted to determine if the site has undergone soil and groundwater testing to determine if it is contaminated. Check the UST database to see if the site is contaminated (has a LUST number assigned).

If contamination has been reported, the database or LUST file will contain information, which shows the extent of soil and groundwater contamination, and offer some evaluation of the risks involved. The file record includes correspondence between the owner and DNR, as well as the consultant's report on where and how much contamination is present at the site.

Records may show the site is in various stages of investigation, risk evaluation, monitoring or actual design and implementation of active cleanup of soil or groundwater. DNR rules have changed such that many sites are being re-evaluated under new Risk Based Corrective Action (RBCA) rules. Under the best circumstances, the site may have been fully evaluated and a regulatory decision made which would help both the seller and the buyer understand and manage any future variables.

In other cases, there may be sufficient site assessment information to make some educated judgments on what, if any, further corrective action might be required, the potential costs, effects on future land use and potential liabilities of the seller and buyer.

Some sites may have received a classification called “no action required” or NAR. Generally speaking, this means a site has fulfilled the minimum regulatory requirements for UST closure, corrective action or cleanup.

With a “No action required” classification there are no guarantees. The law allows DNR to reopen regulation of sites under some circumstances (e.g., reports of fumes in sewers or basements or encountering high levels of contamination during construction activities). It should be noted that “reopen” does not mean the prospective buyer would necessarily be the person responsible for additional work.

The Iowa UST law, Iowa Code 455B.471, places liability for corrective action on owners and operators of USTs. DNR interprets the law to place liability on a prospective buyer of a site with active USTs even though the contamination occurred prior to the sale. However, if the tanks were empty and out of use by July 1, 1985, then liability falls on the owner at the time the tanks were taken out of use.

There are other environmental liability statutes that have been interpreted to give the DNR authority to place some limited liability on owners of contaminated property even though the tanks had been removed. Owners of properties are

potentially responsible for some amount of site investigation, but they are not required to clean up contaminated property. DNR, generally, will look to liable owners and operators of the tanks and does not require innocent property owners to undertake expensive corrective action. For more guidance on liability issues or a letter explaining DNR’s liability policy for USTs, contact DNR’s legal staff.

What if Property Adjacent to a Tank Site is Contaminated?

In cases where property adjacent to a tank site is affected by contamination, DNR considers the tank owner associated with the source of contamination as the responsible party to conduct the investigation. If contamination is discovered at a property adjacent to a LUST or UST site, the property owner must contact DNR. DNR would not require an owner whose property was contaminated by an adjacent tank site to perform cleanup or corrective action if it is clear the contamination is from an adjacent property.

What About Liability of Lenders Holding Security Interests?

Lenders or other parties who hold a property interest (e.g., a mortgage), only as security are granted a conditional exemption of liability for contamination as long as they do not become actively involved in the management of the facility (operators), and, in general, they seek to protect their security in a commonly practiced manner. However, lenders who acquire title of the property held as collateral may have some limited duties such as maintaining financial responsibility and complying with temporary closure rules. In general, lenders can undertake site investigation activities without fear of incurring liability. (See Iowa Code sections 455B.471(6), 455B.381(7) and 455B.392(7a).)

Is There a Prohibition Against the Sale of Petroleum Contaminated Property in Iowa?

Unless a site is on the Iowa Hazardous Waste Registry, there is no state law or prohibition against the sale of property that is contaminated from USTs. See

<http://www.iowadnr.gov/InsideDNR/RegulatoryLand/ContaminatedSites/HazWasteSitesRegistry.aspx>

For all in-state transactions, agents or sellers must file a **Groundwater Hazard Statement** disclosing to prospective buyers the presence of regulated USTs, and any past or newly discovered contamination in soil and/or groundwater. While small farm, residential and heating oil tanks are excluded from disclosure requirements, their disclosure is recommended. A copy of the **Groundwater Hazard Statement** may be obtained by contacting DNR's legal staff or your county recorder.

What Funds are available to pay for the permanent closure of a regulated underground storage tank?

The UST Fund provides up to \$15,000 to the owner of a regulated tank system for permanent closure if that system does not meet performance standards for new or upgraded tanks or is otherwise required to be closed pursuant to DNR rules. The tanks to be closed must be registered with the DNR and the costs for the closure activities must be pre-approved. Heating oil tanks, farm and residential tanks of less than 1100 gallons used for non-commercial fuel, and non-petroleum tanks are not eligible for funding.

What Funds are Available to Help Cleanup a Contaminated Site?

The UST Fund provides benefits for many sites where a release was discovered prior to October 26, 1990 or where a release can be proven to have occurred prior to October 26, 1990. Benefits pay up to \$1 million for the cost of corrective action costs, subject to a statutory copayment of 18% of the first \$80,000 (i.e., \$14,400) in corrective action costs. A claimant is eligible for 100% reimbursement up to \$20,000 for costs associated with site investigation such as completion of the tiered assessment required by

DNR prior to initiating the copayment, and then must pay a minimum \$5,000 copay which is included in the \$14,400 maximum.

IUST Fund benefits are fully transferable if the property is sold or otherwise transferred. To remain eligible for benefits, the site must be in compliance with all the DNR's regulations, and if there are active tanks on the site, the claimant must document continuous financial responsibility coverage. For more information on the uses and availability of the remedial or innocent landowner benefits, contact the UST Fund.

What is the Innocent Landowner Fund and How Does One Become Eligible?

If there is contamination found on a site where the tanks which caused the release have not been in operation since October 26, 1990, the site may be eligible for benefits under the UST Fund's Innocent Landowner Program. This program assists owners with funding to pay for the corrective action associated with contamination from those tanks. If the site is determined eligible and the claimant is not considered to be a responsible party or potentially responsible party, no copayment would apply. If the owner is a responsible party or potentially responsible party for the contamination, he/she would be responsible to pay for 18% of the first \$80,000 (or \$14,400) of corrective action costs. The Innocent Landowner Fund will pay the remainder of eligible costs up to \$1 million. These benefits are only available for sites with contamination from a leaking UST. These benefits do not apply to heating oil tanks.

To determine if a site is eligible for benefits, and to determine which costs are eligible for reimbursement, contact the UST Fund Administrator. If an owner is unable to pay for the cost of tank closure, cleanup or corrective action, it may be possible for the state to conduct the work and assess the cost against the property in the form of a lien or to negotiate the recovery of the costs incurred.

Section 5

What if it is Decided to Close an UST System?

Often, either a prospective buyer or the lending institution will want an UST to be properly closed before a property sale occurs. Iowa regulations require the following basic actions when closing a regulated UST:

1. **The DNR must be notified by submitting a Closure Notification Form at least 30 days before the UST is permanently closed.**
After DNR is notified the owner will receive UST closure information and guidance as well as a closure report form to be completed and returned to DNR. The local DNR Field Office must be contacted 24 hours before the actual removal or fill-in-place procedure.
2. **Closure sampling is required to determine if a spill or releases from the UST have contaminated the surrounding environment.** A closure assessment must be completed and the results submitted to the DNR. If contamination exceeding DNR's action levels is found, a Tier 1 and/or a Tier 2 evaluation will have to be conducted in order to determine the risk involved.
3. **The UST must be emptied of liquid, dangerous vapor levels and accumulated sludge, and then removed or filled in place.** These potentially very hazardous actions need to be carried out by trained personnel who carefully follow standard safety practices. After the tank has been properly emptied of product and sludge, it must be removed or filled in place.
4. **For closing USTs storing heating oil for consumptive use on the premises where stored: Iowa regulations exempt heating oil tanks from UST requirements.**
However, a release from a non-regulated heating oil UST is a reportable release, and the owner must notify DNR, and take the necessary assessment and cleanup actions.

If the steps outlined in this booklet are followed and actions taken accordingly, both you and your client are now on your way to a more orderly, informed, expeditious, and uneventful real estate transaction. If the property has an UST, let the DNR know of your real estate closing requirements at least 90 days in advance of your settlement date so everything can be completed on time.

FOR FURTHER INFORMATION ON USTs

Where to Find the Regulations and other Publications and Information on USTs

Visit the UST Section Home Page: www.iowadnr.gov/ust

For general information about a specific UST Site: <http://programs.iowadnr.gov/tanks/>

Contact the DNR's UST Section website to access the following documents:

UST Pollution Liability Insurance

<http://www.iowadnr.gov/InsideDNR/RegulatoryLand/UndergroundStorageTanks/USTOwnersOperators/USTLiabilityInsurance.aspx>

UST Closure Guidance Document for UST removal or fill in place or for conducting a site assessment for property transfer (on the website).

UST Closure Report Form (on the website).

UST / LUST Regulations

Chapter 567--135 Iowa Administrative Code (IAC): Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks

Chapter 567--136 Iowa Administrative Code (IAC): Financial Responsibility for Underground Storage Tanks

Chapter 567--131 Iowa Administrative Code (IAC): Notification of Hazardous Conditions

Contact the EPA publications webpage for the following publications:

<http://www.epa.gov/OUST/>

List of Known Insurance Providers for Underground Storage Tanks (EPA510-B-12-002), July 2012.

Musts For USTs (EPA 510-K-95-002), July 1995. Clearly summarizes federal UST requirements for installation, release detection, spill, overfill, and corrosion protection, corrective action, closure, reporting and recordkeeping.

Dollars and Sense (EPA 510-K-95-004), July 1995. Clearly summarizes the financial responsibility required of UST owners and operators by federal UST regulations. [16 pages]

Straight Talk on Tanks (EPA 510-B-05-001), Sept 2005. Explains federal regulatory requirements for leak detection and briefly describes allowable leak detection methods. [32 pages]